

Michigan Court of Appeals

DOCKETING STATEMENT

Case No:

Circuit: 10-61-MZ

Court of Appeals:

303414

Please read before completing form.

- MCR 7.204(H) and 7.205(D)(3) require an **appellant** in a civil action to complete and file a docketing statement within 28 days after the claim of appeal is filed or the application for leave to appeal is granted. Failure to timely file this document may lead to dismissal of the appeal. An appellee may respond by filing a separate docketing statement.
- This document will be used to screen the appeal for suitability and eligibility for the settlement conference program, and will be used to help resolve jurisdictional and transcript issues. It is important that you complete this form accurately and legibly.
- The issues identified in the docketing statement do not limit appellant's presentation of the issues in appellant's brief. Omission of an issue in the docketing statement will not provide a basis for a motion to strike appellant's brief.

1. Case Name:

Rozann Denise Marinelli ☐ Appellant ☒ Appellee

Name of first Plaintiff

Address:

Telephone No:

Attorney Name: David Femminineo Bar No: 56471

Address: 111 S. Main Street
Mt. Clemens, MI 48043

Telephone No: (586) 954-9500

v

Michigan Department of Transportation ☒ Appellant ☐ Appellee

Name of first Defendant

Address: 425 W. Ottawa Street
Lansing, MI 48913

Telephone No: (517) 373-1470

Attorney Name: Justin Gray Bar No: 73704

Address: 425 W. Ottawa Street
Lansing, MI 48913

Telephone No: (517) 373-1470

2. ☐ A bankruptcy or other proceeding has been filed which affects this Court's jurisdiction over this appeal.

Identify and explain.

3. ☐ There are pending or prior appeals in the Court of Appeals or Supreme Court which arose out of the same transaction, lower court case, or between the same parties.

Specify case name, lower court number, appellate court number(s), and citation, if available.

4. ☐ I am aware of the following pending appeals in the Court of Appeals or Supreme Court raising the same or closely related issues.

Specify case name, lower court number, appellate court number(s), and citation, if available.

5. Identify all the lower court hearings.

Type of proceeding (i.e. motion, trial, etc.) Hearing, Motion for Sum. Disposition	Date(s) Occurred 03/23/2011	Court Reporter Paul Brandell

6. Nature of case:

- a. If the lower court case number provided on page 1 does not include a suffix, please specify the circuit court case code (i.e. NI, CK, etc): _____.
- b. Identify the procedural nature of the case being appealed.
- ☐ arbitration ☐ bench trial ☐ post-judgment action ☐ declaratory judgment
- ☐ interlocutory matter ☐ jury trial ☒ summary disposition
- ☐ administrative proceeding (specify agency) _____
- ☐ other (i.e. default judgment) _____

7. Briefly describe the nature of the action and the result in the trial court. Conclusory statements such as "the judgment of the trial court is not supported by law" are unacceptable. Attach additional pages as needed.

Appellee-Marinelli sued Appellant-MDOT under the motor vehicle exception to governmental immunity for injuries sustained when a defective trailer broke while being towed by an MDOT truck and the trailer collided with Marinelli's automobile. MDOT moved for Summary Disposition because the MDOT employee was not operating the trailer; the trailer is not a "motor vehicle"; and MDOT was not negligent. MCL 691.1405. MDOT's Motion for Summary Disposition, per MCR 2.116(C)(7), was denied. The Court of Claims applied res ipsa loquitur and held that the trailer was being operated as part of the motor vehicle.

8. Briefly state the issues to be raised in this appeal. Attach additional pages as needed.

The trial court erred by allowing Marinelli to overcome immunity granted by the Governmental Tort Liability Act (GTLA), MCL 691.1401 et seq., because there was no negligent operation of a motor vehicle; a broken, unattached trailer is not a "motor vehicle"; and the MDOT employee-driver was not negligent.

9. The amount and terms of the judgment appealed are:

The judgment appealed is the denial of a Motion for Summary Disposition brought under MCR 2.116(C)(7), immunity granted by law, i.e. government immunity.

10. Settlement negotiations. (Check all boxes that apply.)

- ☐ Settlement negotiations have been conducted or are scheduled.
- ☒ Settlement is unlikely.
- ☐ Other _____

4/7/11

Date

Signature

Provide the Proof of Service on a separate form.